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SUPREME COURT OF THE UNITED STATES.

No. 14.

JOHN SMITH T., PLAINTIFF,

VERSUS

ROBERT BELL.

ON A CERTIFICATE OF DIVISION IN OPINION OF THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF TENNESSEE.

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Be it remembered, that, at a circuit court of the United States, begun and held at Knoxville, for the seventh circuit and district of East Tennessee, on the second Monday of October, one thousand eight hundred and twenty-seven, the Marshal for said district returned that he had executed the following capias ad respondendum, to wit:

The President of the United States to the Marshal of East Tennessee district, greeting:

You are hereby commanded to take Robert Bell, a citizen and resident within the district of East Tennessee, if he be found in your district, and him safely keep, so that you have his body before the honorable the Judges of the court of the United States for the seventh circuit in the district of East Tennessee, at the court-house in Knoxville, on the second Monday of October next, to answer John Smith T., a citizen of the State of Missouri, one of the United States of America, of a plea of trespass on the case, to

his damage five thousand dollars, and have you then there this writ. Witness, &c.

Which writ is endorsed as follows, to wit: "John Smith T. *vs.* Robert Bell: issued 24th September, 1827; to October term, 1827; come to hand the 24th September, 1827; executed the 27th of September, 1827; W. S. Callaway, D. M."

The declaration is in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and district of East Tennessee:

John Smith T., a citizen of the State of Missouri, one of the United States of America, by attorney, complains of Robert Bell, a citizen of the State of Tennessee, and resident in the district of East Tennessee, in custody of the Marshal, of a plea of trespass on the case, for this, that, whereas heretofore, to wit, on the 1st day of January, 1827, at Knoxville, to wit, in the district aforesaid, the said plaintiff was possessed of the following negroes, to wit, Lucy, aged about 45 years; Jack, aged about 26 or 27 years; Sophia, aged about 24 years; Harry, aged about 21 years; Alexander, aged about 19 years; Ned, about 13 years; Sophia, years; and Letitia, aged about 13 months; which were of great value, to wit, the value of four thousand five hundred dollars, as of his own proper goods and chattels; and being so possessed thereof, afterward, to wit, on the same day and year last aforesaid, at Knoxville, in the district aforesaid, casually lost said negroes from and out of his possession, which said several negroes afterwards come into the hands and possession of the said defendant by finding; yet the said Robert Bell, well knowing the said negroes to be the property of said plaintiff, and to him of right to belong and appertain, though often thereto requested, has not delivered said negroes, or any or either of them, to said plaintiff; but afterwards, on the same day and year aforesaid, sold and converted said negroes to his own use, to the damage of the plaintiff five thousand dollars; wherefore he sues, &c.

THOS. L. WILLIAMS, *att'y for plff.*

The defendant's pleas are as follows, to wit:

And defendant, by attorney, comes into court and defends the wrong and injury when and where, &c. and says the plaintiff his action against him ought not to have and maintain, because he says he is not guilty of the trover and conversion as alleged against him in the plaintiff's declaration; and of this he puts himself on the country.

JARNAGIN, *att'y for deft.*

And the plaintiff, also.

THOS. L. WILLIAMS, *att'y.*

And for further plea in this behalf, the said defendant says, the plaintiff his action aforesaid against him ought not to have and maintain, because he says he is not guilty of the trover and conversion as charged against him in the plaintiff's declaration within three years before the issuance of the original writ in this cause, and this he is ready to verify, and prays judgment, &c.

JARNAGIN, *att'y for deft.*

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REPLICATION.

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For replication to the plea of the statute of limitations, said plaintiff says, that, by reason of any thing in said plea contained, he ought not to be precluded from his action aforesaid, because he says that the several negroes described, set forth, and named in his, said plaintiff's, declaration, were, by the last will and testament of one Britain Goodwin, deceased, and bequeathed to Elizabeth Goodwin, wife of said Britain, during the life of said Elizabeth Goodwin, and the remainder of, in, and to said negroes, by the will aforesaid, and at the death of said Elizabeth, was to be vested in, and to become the right and property of, one Jesse Goodwin, the son of said Britain Goodwin, and to said Jesse was of right to belong and appertain, by virtue of the provisions in his, the said Britain Goodwin's, will; and the said Jesse Goodwin, being so vested with the remainder of and in said negroes, according to the last will and testament aforesaid, on the day of bargained, sold, conveyed, assigned, and set over to said plaintiff, all the right, title, interest, property, and claim, which he, the said Jesse, devised as aforesaid, had of, in, and to the negroes aforesaid, as by reference to the bill of sale from said Jesse to the said plaintiff will more fully appear; and said plaintiff further, in fact, says, that, on the day of 1813, said defendant, Robert Bell, intermarried with said Elizabeth Goodwin, widow of said Britain Goodwin, and owner of the life estate in said negroes; by virtue of which intermarriage, said Robert Bell, in right of his wife as aforesaid, became owner of the life estate in said negroes. Said plaintiff also further, in fact, says, that, on the day of November, 1825, said Elizabeth Bell, wife of said Robert Bell, and owner, under the will of said Britain Goodwin, of the life estate in said negroes, departed this life, whereby all right, title, interest, property, and claim of said defendant, Robert Bell, of, in, and to said negroes, was extinguished, determined, and wholly at an end. And said plaintiff does further aver, that he sued out and prosecuted the original writ in this cause within less than three years from and after the death of said Elizabeth, and within less than three years from and after the determination of said life estate, and this he is ready to verify; whereupon he prays judgment.

THOS. L. WILLIAMS, *att'y for plff.*

To which replication there is the following demurrer, to wit:

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The defendant, for rejoinder to the replication of plaintiff to the plea of the statute of limitations of defendant, says, the plaintiff ought not to have and maintain his action against said defendant by reason of any thing contained in said replication, because he says the matters and things therein stated, in manner and form as there stated, are not good and sufficient in law to prevent a bar by the statute of limitations as pleaded by defendant, nor is he bound to make any other or further rejoinder to said replication than by demurrer; therefore does demur, and sets down and shews to the court the following causes: 1st, said replication pretends to shew a right under a will, and makes no profert of a will; 2d, said replication does not shew when plaintiff acquired his right; 3d, said replication does not shew when defendant intermarried with Elizabeth Goodwin, nor said Elizabeth Goodwin died; 4th,

said replication is informal and wants substance: all which matters and things defendant is ready to verify; wherefore he prays judgment, &c.

SPENCER JARNAGIN, *att'y for deft.*

This cause was continued from term to term until October term, 1829, when the following proceedings were had, to wit:

KNOXVILLE, *Thursday, 15th October*, 1829.

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This day came the parties by their attorneys, and the defendant's demurrer, on argument, was overruled; whereupon the defendant by his counsel, with the leave of the court, withdrew the plea of the statute of limitations; and thereupon came a jury, to wit: Richard Netherland, William K. Blair, John Lea, Joseph Everett, Robert Glenn, George R. Powell, James Kennedy, James H. Cowan, William F. Brown, Thomas McCorry, John Rutherford, and Thomas Crutchfield, who, having been elected, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say, they cannot agree; whereupon a juror is withdrawn by order of the court, and a mistrial intered, and the jury discharged.

KNOXVILLE, *Thursday, 16th October*, 1829.

This cause was ordered to be certified to the Supreme Court of the United States, as follows, to wit:

United States of America, Seventh Circuit and District of East Tennessee.

At a circuit court of the United States, begun and held at Knoxville, for the district of East Tennessee, on Thursday the sixteenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, and in the 54th year of American independence—Present, the Honorable John McLean and the Honorable John McNairy, Esquires.

JOHN SMITH T. *vs.* ROBERT BELL.

The plaintiff and defendant agree to the following facts, and ask the judgment of this court upon them. That Britain Goodwin, a citizen of the State of Tennessee, and resident in the district of East Tennessee, did, on the 17th day of October, in the year of our Lord 1810, made and executed his last will and testament, in the words and figures following, to wit: "In the name of God, amen. I, Britain Goodwin, of the State of Tennessse, and county of Roane, yeoman, being mindful of my mortality, do, this 17th day of October, in the year of our Lord one thousand eight hundred and ten, and thirty-fifth year of independence of the United States of America, do make and publish this my last will and testament, in manner following: First, I desire to be decently buried in the place where I shall happen to die; also, I give and bequeath unto my son, Jesse Goodwin, my young sorrel gelding and one feather bed, to be delivered to him by my executrix after my decease; also, I give to my wife, Elizabeth Goodwin, all my personal estate whatsoever, and wheresoever, and of what nature, kind, and quality soever, after payment of my debts, legacies, and funeral expenses; which personal estate, I give and bequeath unto my said wife, Elizabeth Goodwin,

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to and for her own use and benefit and disposal absolutely: the remainder of said estate, after her decease, to be for the use of the said Jesse Goodwin: and I do hereby constitute and appoint my said wife, Elizabeth Goodwin, sole executrix of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

his
BRITAIN B. + GOODWIN, [L. S.]
mark

The foregoing will is duly witnessed, proved, and recorded.

It is further agreed, that said Britain Goodwin departed this life in the month of October, 1811; that his wife, the said Elizabeth Goodwin, named in the foregoing will, took into her possession all the personal estate of said Britain Goodwin, under the bequest in said will to her, and retained the same until the month of November, in the year of our Lord one thousand eight hundred and thirteen, when she intermarried with Robert Bell, the defendant in this suit; that she and Robert Bell kept the possession of said personal estate till the latter part of the year 1826, when the said Elizabeth Goodwin died. Said Robert Bell has kept the possession of said personal estate ever since, claiming the same as his own, under the bequest in said will to his said wife Elizabeth; among which are the following named negroes, to wit: Lucy, aged about forty-five; Jack, aged about twenty-six; Sophia, aged about twenty-four; Harry, aged about twenty-one; Alexander, aged about nineteen; and Ned, aged about thirteen; which said negroes are admitted to be of the value of two thousand three hundred and twenty-five dollars; which sum, with interest thereon from the first day of September, 1827, at which time said negroes were demanded of defendant by plaintiff's agent; and it is agreed the said sum and interest would amount to two thousand six hundred and fifteen dollars sixty-two and a half cents, which last sum is sought by plaintiff to be recovered of defendant in this action of trover. It is further agreed, that said Jesse Goodwin, the person named in the will of Britain Goodwin, did, in due form, execute to John Smith T., the plaintiff, the following bill of sale, to wit: "I have sold to John Smith T. all my right, title, interest, and claim to the estate of my father, Britain Goodwin; and I do hereby authorize the said John Smith T. to bring whatever suit or suits may be necessary to recover all of the property I am or may be entitled to from the said estate; to act in all cases as he, the said John, may think proper, and to convert the property he may recover to his own proper use, and give any receipts or acquittances in my name which may be necessary, hereby vesting the before named John Smith T. with all the power I could use in my own proper person, were I personally present; for value received.

Witness my hand and seal, this thirty-first day of March, 1815.

JESSE GOODWIN, [L. S.]

Said bill of sale has been duly proved and registered, in pursuance of the statutes of the State of Tennessee in such cases made and provided.

The foregoing are the facts agreed to in this cause, brought before the court upon the following state of pleadings. This is an action of trover, brought by John Smith T. against said Robert Bell, to recover the value of the negroes heretofore named. To the declaration the defendant pleaded